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6 IN THE UNITED STATES DISTRICT COURT

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FOR THE NORTHERN DISTRICT OF CALIFORNIA

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IN RE:BANK OF AMERICA CORP.
AUCTION RATE SECURITIES (ARS)
MARKETING LITIGATION,

No. 09-02014 JSW

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This document applies to:

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*Independence Tube Corp. v. Bank of America,
et al.*, 09-887-JSW

**ORDER DENYING MOTION TO
VACATE PLAINTIFF'S NOTICE
OF VOLUNTARY DISMISSAL.**

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Now before the Court for consideration is the Motion to Vacate Plaintiff's Notice of Voluntary Dismissal and to Stay Arbitration, filed by Defendants Bank of America Corporation, Banc of America Investment Securities, Inc., and Banc of America Securities, LLC (collectively "Defendants"). The Court finds this matter suitable for disposition without oral argument and VACATES the hearing set for December 11, 2009 on this motion. Having considered the parties' papers, relevant legal authority, and the record in this case, the Court DENIES Defendants' motion.

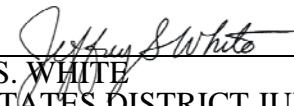
A plaintiff may dismiss an action without leave of court by filing a notice of dismissal before a defendant has filed an answer or a motion for summary judgment. Fed. R. Civ. P. 41(a)(1)(A)(i). It is undisputed that Defendants had not filed either an answer or a motion for summary judgment at the time Plaintiff filed its notice of voluntary dismissal. Further, the Court's tentative ruling on Defendant's motion was no more than a tentative ruling and certainly did not qualify as a written order or judgment on the pending motion.

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1 Accordingly, the Court DENIES Defendant's motion. *See American Soccer Co., Inc. v.*
2 *Score First Enterprises*, 187 F.3d 1108, 1110 (9th Cir. 1999) (upholding voluntary dismissal
3 after trial court conducted lengthy preliminary injunction hearing, which it stated would
4 constitute decision on merits, but before order on motion was issued).

5 **IT IS SO ORDERED.**

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7 Dated: November 6, 2009

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14 JEFFREY S. WHITE
15 UNITED STATES DISTRICT JUDGE